

## **Port of Wilmington Expansion Task Force**

Wednesday, October 14, 2015  
10:00 a.m. – 12:00 p.m.  
3<sup>rd</sup> Floor Conference Room  
Carvel State Building  
820 N. French Street  
Wilmington, Delaware 19801

### **Meeting Attendees:**

#### **Task Force Members:**

##### **Present:**

Representative Charles Potter, Jr.  
State Senator Catherine Cloutier  
William Ashe  
Secretary Jennifer Cohan  
Paul Cutler  
Secretary John McMahon  
Rick Ryan  
Mike Evanko  
Secretary Thomas J. Cook  
Gene Bailey  
Paul Thornburg  
John Coulahan  
Kimoko Harris  
Peter Hartranft  
Trevor Knight  
Director Bernice Whaley  
Secretary Jeffrey Bullock  
Secretary David Small

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##### **Absent:**

Senator Margaret Rose Henry  
State Representative Kevin Hensley  
Jose Gonzales  
Secretary Edwin Kee

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##### **Staff:**

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Geoff Heath  
Shannon Reeder

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**Public:**

**Attendees:**

Michael Barnes  
P. Cooke  
Jim Poling  
Roger Bohnert  
Katrina Cowart  
State Representative Bryon Short  
State Representative Paul Baumbach  
Jane Dilley  
Erika Furlong  
Darrell Balbon  
Gary Warren  
Bill Powers  
Angela Harris  
Umar Hassan El  
Randall Chase  
Travis Black  
John Kennedy  
John Flaherty  
Stephen Crockett  
Ruth Baker  
Peggy Schultz  
Martha Denison  
Kim Gomes  
Albert Shields  
Toby Lamb  
John Goodridge  
Rob Keesler  
Joseph Durham  
Dinah Russ  
Matthew Meyer

**Organization:**

Local 1694-1  
ILA  
DNREC  
USDOT  
Delaware State Senate  
Delaware House of Representatives  
Delaware House of Representatives  
LWVDE  
Delaware Nature Society  
Public  
Farmer  
Farmer  
New Castle County Government  
Muslim Center of Wilmington  
Associated Press  
MARAD  
MARAD  
Public  
Delaware State Senate  
LAPA  
LWVDE  
Public  
Byrd Group  
U.S. Representative John Carney  
Local 199  
Local 1694-1  
Legislative Assistant/Senator Cloutier  
DBBR Representative  
AFSCME 1102  
Potomac Law

**Opening**

State Representative Charles Potter, Jr., co-chair, called the meeting to order at 10:07 a.m. He thanked the task force members and the public for attending the meeting of the Port of Wilmington Expansion Task Force.

Representative Potter asked if there were any alterations to the meeting minutes presented to the task force members. The meeting minutes were unanimously approved by a voice vote and are officially on public record.

Rylene Harper, Legislative Assistant to State Representative Charles Potter, Jr., provided a procedural announcement regarding the minutes for task force meetings. She explained that the

draft copy is presented to the co-chairs and the task force members for review, and then required a vote of approval at the following meeting. After approval, the meeting minutes are posted to the Delaware General Assembly website, via [www.delaware.gov](http://www.delaware.gov).

Representative Potter emphasized the importance of transparency in the procedures of the task force, and explained that the meeting minutes and other task force materials from each meeting are available for the public. He invited Secretary of Finance, Thomas Cook, to provide an update to the task force members.

Secretary Cook thanked Representative Potter and the task force members for their attendance. He stated that the Request For Qualifications (RFQ) Evaluation Committee has received four responses from highly qualified candidates, including AECOM, Duffield Associates, Tetra Tech, Inc., and WSP Parsons Brinkerhoff. The evaluation committee interviewed the respondents on Monday, October 12<sup>th</sup>. He detailed that the four respondents presented various approaches for putting forth the strategic plan for potential expansion projects, which included the entire Delaware River and not just the Port of Wilmington. He clarified that the committee has not made a decision on the candidates, but they are in the process of verifying references provided. He concluded by stating that there may be discussion at the October 20<sup>th</sup> Port of Wilmington Board of Directors meeting to make a recommendation for the path forward.

Representative Potter asked if he could reiterate the four candidates under review by the RFQ Evaluation Committee.

Secretary Cook clarified that the four respondents included AECOM, Duffield Associates, Tetra Tech, Inc., and WSP Parsons Brinkerhoff.

Paul Cutler, Vice President of International Longshoreman's Association Local 1694-1, asked if the Port of Wilmington Board meetings are open to the public.

Secretary Cook responded that the meetings are open to the public, but the Port of Wilmington Board has the ability to enter an executive session for contractual discussions. He stated that he could provide further clarification on the matter.

Martha Denison of the public asked if the companies discussed plans to complete the work at the Port of Wilmington.

Secretary Cook clarified that the companies under review by the RFQ evaluation committee plan to produce a strategic plan for the Delaware River projects, but do not plan to complete the work themselves.

Martha Denison asked what specific board is being discussed in the RFQ Evaluation Committee update.

Secretary Cook clarified that it is the Port of Wilmington Board that is reviewing the potential candidates.

Representative Potter thanked Secretary Cook for his update. He informed the task force members and public that Secretary Margaret Rose Henry was unable to attend the meeting.

### **Funding Discussion**

Representative Potter asked if representatives from the U.S. Department of Transportation's Maritime Administration could provide information regarding public-private partnerships, funding, and other information for port projects.

Roger Bohnert, formerly with the U.S. Department of Transportation's Maritime Administration (MARAD) and presently with the Build America Transportation Investment Center (BATIC), explained that BATIC is an entity under supervision of U.S. Department of Transportation Secretary, Anthony Foxx. He introduced John Kennedy, the Maritime Administration's Gateway Officer for the region, and Travis Black, Community Planner at the Maritime Administration's Headquarters.

He started his discussion by introducing MARAD's StrongPorts program, which is designed to deliver assistance to all U.S. ports and their communities. The StrongPorts framework provides initiatives and activities aligned with the three phases of project development: planning and engagement, finance, and project support. He clarified that the Port of Wilmington is currently in the planning and engagement phase of the project, which requires involvement of the state, metropolitan planning organizations, and other stakeholders. He stated that a majority of BATIC's efforts focus on the planning and engagement and finance phases, as this is the area where a majority of U.S. ports require assistance.

He also discussed the Port Planning and Investment Toolkit, which were developed by MARAD and the American Association of Port Authorities. The toolkit details project funding strategies that are available so that successful port infrastructure projects have the investment-grade plans supported by both public and private stakeholders. He emphasized that the toolkit was designed after considerable input from 55 volunteer stakeholders. He discussed the various aspects of the Port Planning and Investment Toolkit, which include public-private partnerships, the continuum of that partnership, and scheduled steps for the partnership, all of which are available to the public.

He reiterated the StrongPorts program and the financial aspects of the partnerships, which include TIGER Grants, which the Port of Wilmington received in 2013. He stated that BATIC obtained access to two loan programs which may be of interest to the Port of Wilmington: The Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF). TIFIA and RRIF can be bundled together, depending on the aspects of the projects.

He highlighted project support that includes various construction phases, which is conducted on a limited basis. While the Maritime Administration is available to assist with improvements of port facilities at this phase, BATIC is not as involved as they would be in the previous two phases.

Secretary Cook asked if StrongPorts program has been implemented at other port locations.

Roger Bohnert responded that the StrongPorts program is assisting several ports in the areas of planning and engagement, which is focused on people, products, and services.

Secretary Cook asked if the ports received services from planning and engagement through project support.

Roger Bohnert explained that the process is a continuum and StrongPorts serves the areas most needed for the project. He stated that the TIGER Grant program is currently assisting 42 different ports, and has helped increase engagement, despite only being in existence for shortly over a year.

Secretary of State Jeff Bullock asked if the year duration explained in the toolkit is solely for the financing element of the public-private partnerships (P3).

Roger Bohnert explained that the year described is to formalize the relationship with the private partner and becomes more complex later on.

Secretary Bullock highlighted that the task force is interested in the most effective model, while also being time sensitive and recognizing the need to expedite certain processes.

Roger Bohnert mentioned that he is aware of the quick timeline for the Delaware River projects. He emphasized that every project is different and without federal involvement, the project timeline could be increased. If federal support is sought after, then there will be increased regulations that may increase the length of the timeline; however, there will be added benefits.

Representative Potter asked what the scenario would be if the Port of Wilmington came to the federal government for the loan, but faced impediments.

Roger Bohnert discussed the TIFIA loan program, which can fund projects inside the port that help intermodal transport frigs, which operate under the U.S. Federal Highway Administration. The Port of Newark in New Jersey has filed a letter of interest, which begins a formal request for the TIFIA loan. The Port of Newark will focus on a variety of elements that are evaluated on a case-by-case basis. He stated that once a letter of interest is filed, the application will be reviewed for accreditation and there will not be formal proceedings if there was not a high chance of closing. The project sponsor would have to pay \$100,000 to hire external financial counseling, and the program would not want to proceed if the deal would not be closed. Henceforth, the project would receive notice within 30 – 60 days. He clarified that the letter of interest is vital and there has to be proof of a valid revenue stream, similar to a mortgage.

Representative Potter inquired about the interest rate for a TIFIA loan.

Roger Bohnert responded that, as of October 13<sup>th</sup>, 2015, the TIFIA interest loan rate was 2.88 percent.

John Kennedy, the Maritime Administration's Gateway Officer for the region, clarified that the TIFIA loans can be a 35-year payment plan and the payback does not have to be until 7 years until after the project is complete.

Secretary of Transportation Jennifer Cohen stated that as a recent recipient of a TIFIA loan for the Route 301 project, proving credit worthiness may be an issue and can cause financial and time restraints, as the loan took two years to process.

Roger Bohnert stated that two years is longer than the normal process for a TIFIA loan; however, he understands the time restraints for the Delaware River projects, and is worth considering. He emphasized the importance of the verifiable revenue stream, and also that an advantage to the public-private partnerships is the due diligence process and understanding that this project is a good investment.

William Ashe, President of the International Longshoreman's Association 1694, asked if the federal government has the ability to fast track an environmental assessment for the project.

Roger Bohnert mentioned that the National Environmental Protection Act (NEPA) requires a review when major federal action occurs for a project. He detailed that the process for a NEPA review can take 12 – 18 months depending on the complexities of the project, which includes public hearings to ensure transparency. Under BATIC, there is an environmental permitting dashboard that increases transparency and review. He stated that federal credit programs triggers the NEPA review, which is something worth considering.

Mike Evanko, President of the Port Contractors, Inc., asked if the NEPA review and due diligence process can be in concurrence of one another.

Roger Bohnert stated that the project would want the NEPA review to be well along in the process before entering further financial obligations with the due diligence process, so to ensure the success of the project. He stated that TIFIA can finance up to 49 percent of the financing for eligible costs; however, the U.S. Department of Transportation has only ever financed up to 33 percent of a project.

Ruth Baker of LAPA asked what the likelihood would be of BATIC funding all projects if they were from the same region, such as port projects in Pennsylvania and New Jersey.

Roger Bohnert stated that this has not been an issue as of yet; however, each application would be considered on its merit. The important aspect of the review would be the credit worthiness of each project, as it pertains to loan financing.

Ruth Baker asked if the project could be completed in a series of events.

Roger Bohnert stated that there is an advantage of being early in the process, but a disadvantage is the timeline of doing the project in a series of events. As long as the project complies with the rules and regulations, then it could be completed in a series and TIFIA could finance portions of these projects.

John Kennedy reiterated that the comprehensive plan for the record is an advantage and could be included in these efforts.

Martha Denison asked if the strategic plan would address potential pollution issues with the projects, such as dredging and spoils.

Roger Bohnert explained that he could not speak to the strategic plan.

Martha Denison asked if NEFA review would address potential pollution issues from these projects.

Roger Bohnert detailed that the NEFA review is thorough and comprehensive and would examine mitigation and brownfields. He also explained that there are federal regulations for hiring construction that are fairly restrictive.

Representative Potter asked for additional information on minority hiring in this regard.

Roger Bohnert stated that there is an aspect of TIFIA and RRIF that includes percentage values for minority hiring that is complex. In addition, he explained that the project could be completed in various steps and still be applicable to TIFIA loans. He explained that the Port of New York project has undergone several aspects of the project and is complex, but remains eligible for loans.

Representative Potter asked what the maximum amount of funding is available for project financing.

Roger Bohnert responded that the total loan money available for projects is \$50 billion, which is appropriated every 2 to 3 years, and is not aware of any project being capped. He also stated that RRIF is underutilized and may be of interest.

Kimoko Harris, Business Agent for the Longshoremen's Association Local, asked if there are existing interrelationships with projects.

Roger Bohnert explained that their agency works with several others for permitting processes and projects, including the U.S. Army Corps of Engineers.

Roger Bohnert transitioned into the discussion of the Build America Transportation Investment Center, which President Obama instituted in July 2014. BATIC serves as the U.S. Department of Transportation's entity focused on increasing the use of public-private partnerships and to increase the access to federal credit programs. Secretary Foxx established the BATIC staff to coordinate with various entities, and John Kennedy is the contact for the Delaware River projects.

Representative Potter clarified that the task force has moved forward with certain issues and the Port of Wilmington is already in discussions regarding funding and project development.

Roger Bohnert stated that he would be available to discuss proceedings for the various project steps.

Representative Potter asked if a flow chart could be provided to discuss a step-by-step basis.

John Kennedy discussed his background pertaining to port projects and TIGER Grants. He explained that a \$10 million grant was awarded to the Port of Wilmington in 2013 to rehabilitate areas and the project is still underway. He mentioned the competitiveness of TIGER grants, in which only \$500 million is rewarded for the country annually. He stated that the port projects do well because the economics make sense with the various intermodal connections and the leveraging of available resources and relationships.

Travis Black, Community Planner for MARAD, stated that he has had 15 years of experience at the local and county level and is available to support gateway directors with project development needs.

Roger Bohnert explained that the Port of Richmond Metropolitan Planning Organization (MPO) was able to fund cargo cranes and other equipment, and may be willing to help fund port projects in the region.

Secretary Bullock explained that the Port of Wilmington does not deal with the Metropolitan Planning Organization in the region.

Kimoko Harris asked for insight on east coast ports in the near future, given the expansion of the Panama and Suez Canal.

Roger Bohnert stated that post-Panama Canal, ships are entering more than in the past. When the Panama Canal opens, he anticipates increased competition between the Panama Canal authority and the price charged and the transcontinental railroads. If there is a higher rate for the Panama Canal, then more ships will enter through the West Coast. If the Panama Canal is better, then more ships may enter through the east coast. He stated that in the next 30 years, freight transportation will increase by 45 percent and will increase by 100 million people.

Representative Potter asked what the capacity would be for Delaware.

Roger Bohnert stated that there are a variety of large metropolitan areas and there will be increased freight in the region, whether at Delaware ports or elsewhere. He reiterated that freight transportation is cheaper than other modes, and it is a great approach to have four organizations come forward with strategic plan presentations.

John Kennedy stated that Philadelphia is also worried about similar issues pertaining to capacity.

Peter Hartranft of the task force stated his support for an additional gateway container port, since the country and region is facing a serious congestion problem.

Roger Bohnert stated that regional competition is increasing and the port could have an impact on local jobs and other industries in the area.

Gary Warren stated that ports in the region must address the ability to handle commodities, and that farmers in the region continue to grow more products than they can transport.

Roger Bohnert stated that the organization chosen for the strategic plan should examine the macro and microeconomics relating to trade routes.

Roger Bohnert mentioned the importance of public-private partnerships available, why they should be considered, and the advantages and disadvantages of these decisions. He highlighted the various advantages to public-private partnerships, including: private financing and investor management and project supervision; task bundling and integration and the life-cycle cost and technological innovation and competition in design; and that risk transfers to the entity are considered the best position to manage.

Mr. Bohnert also highlighted several challenges that arise from public-private partnerships, including: public acceptance; enabling legislation; and organizational capacity resulting from knowledge gaps and different oversight and contract management approaches; revenue constraints pertaining to federal and state toll restrictions and revenue shortfalls; difficulties in predicting traffic and revenue; difficulty in identifying and pricing risk and proper risk allocation; and the long-term nature of public-private agreements.

He also discussed the range of project delivery options, stating that the risk transfer is primarily associated with the public entity. He also illustrated the various differences between conventional and public-private partnerships, which may be useful to review before proceeding.

In closing, Mr. Bohnert thanked Representative Potter, the task force, and the public for listening to his presentation.

Representative Potter thanked Roger Bohnert for discussing BATIC and public-private partnerships. He opened the floor for discussion.

### **Discussion by Task Force Members**

William Ashe motioned to conduct an environmental assessment of the RiverEdge project.

Representative Potter explained that a discussion is needed to proceed and asked him to elaborate on the motion.

William Ashe explained the environmental aspect could proceed, while the state is considering the strategic plan. He understands that the process would not be fast tracked, but it could be started.

Kimoko Harris seconded the motion on the floor.

Representative Potter opened the floor for discussion of the motion to proceed with an environmental assessment.

Secretary Cook stated that the environmental assessment would have financial implications and asked if an application would be put forth to the federal government.

William Ashe responded that the study would not be conducted by the federal government, but would utilize funds set aside and could be conducted by the House of Representatives, State Senate, or the Diamond State Board.

Kimoko Harris mentioned that the RiverEdge project has already been evaluated regarding feasibility and would not be starting from the beginning. He stated that the environmental assessment could make the process faster and lead to development.

Representative Potter stated that at the last meeting, the task force examined the timeline and potential for the port. He reiterated that the City of Wilmington and New Castle County government have promised to allocate funds. He understands that there is regional competition and asked task force members to provide input on the motion.

Mike Evanko stated that a strategic plan should be in place prior to execution. He stated that there might be entirely different environmental assessment and activities at the federal, state and private levels, and is unsure as to what level of assessment is being proposed.

Secretary Bullock clarified that the Port of Wilmington Board of Directors is hiring a consultant to provide a strategic plan, which would include an environmental survey that will address certain environmental questions. He does not want the Port of Wilmington Board of Directors to become disorderly with their proceedings, as they have already expedited the process.

Representative Potter explained that the task force and public must come together to move the state forward with port expansion, despite a differing of opinion.

William Ashe stated that more than one aspect of the project could be completed simultaneously. He stated that federal funding can be an option in the future, but the environmental aspect should be addressed immediately.

Secretary Bullock responded that the Port of Wilmington Board of Directors has decided on their current action, and plans to receive the strategic plan soon.

William Ashe emphasized that the RiverEdge project impacts regional port competition, as well as jobs available to Delawareans.

Representative Potter stated that he understands the importance of conducting an environmental assessment. He questioned if the task force could vote to have the state allocate funds toward an environmental assessment for the RiverEdge site.

Secretary John McMahon of the Department of Labor asked if the RiverEdge site is private property. He assumed that the property is private and is unsure if the utilization of state funds is appropriate in this scenario, and may require a legal interpretation of state financing.

Representative Potter acknowledged the importance of legality and thanked Secretary McMahon for his input.

Kimoko Harris argued that the state has funded past projects and provided funding to private entities and organizations, and should consider doing so for the RiverEdge site.

Secretary Cook asked if the task force has the ability to appropriate funds, and would like to have the question of legality addressed.

Representative Potter stated that he understands the motion on the floor, and acknowledged the need to have a legal opinion.

A motion was made by William Ashe and seconded by Kimoko Harris to proceed with an environmental analysis for the RiverEdge site. Motion failed. Yes – (William Ashe and Kimoko Harris); No – (Peter Hartranft and John Coulahan); Abstain – (Representative Potter, Senator Cloutier, Secretary Bullock, Secretary McMahon, Secretary Cook, Director Whaley, Secretary Small, Rick Ryan, Trevor Knight, Paul Cutler, Mike Evanko, Paul Thornburg, and Gene Bailey); Absent – (Senator Margaret Rose Henry, Representative Hensley, Secretary Kee, Secretary Cohan, and Jose Gonzales).

A motion was made by Representative Potter to table the environmental analysis proposal. Motion carried. Yes – (Representative Potter, Rick Ryan, and Secretary Bullock). No – (William Ashe and Kimoko Harris); Abstain – (Senator Cloutier, Peter Hartranft, John Coulahan, Secretary McMahon, Secretary Cook, Director Whaley, Secretary Small, Trevor Knight, Paul Cutler, Mike Evanko, Paul Thornburg, and Gene Bailey); Absent – (Senator Margaret Rose Henry, Representative Hensley, Secretary Kee, Secretary Cohan, and Jose Gonzales). The proposal to proceed with an environmental analysis at the RiverEdge site was tabled.

Representative Potter stated that he would seek a legal opinion about the environmental assessment as it pertains to private lands, and would also ask for additional information regarding simultaneous projects being conducted.

Roger Bohnert clarified that it is important for a scope of work to be completed prior to an environmental review, and there may be need for additional discussions before any form of NEPA review.

Ruth Baker asked if discussions of environmental assessments should occur while federal representatives are present.

Representative Potter clarified that all proceedings of the task force are open to the public.

Martha Denison echoed the concerns of William Ashe and acknowledged the concerns of various civic associations, as it pertains to environmental impacts at the RiverEdge site. She asked that DNREC examine current information about the sites prior to any proceedings.

**Closing**

Representative Potter adjourned the Port of Wilmington Expansion Task Force meeting at 11:38 a.m.

Minutes prepared by Geoff Heath – Legislative Assistant  
Minutes reviewed by Rylene M. Harper – Legislative Assistant and Task Force Staffer